EXHIBIT "A"

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 1              IN THE UNITED STATES DISTRICT COURT

 2              FOR THE EASTERN DISTRICT OF TEXAS

 3                      MARSHALL DIVISION

 4  IMPLICIT, LLC                 )(

 5                                )(   CIVIL ACTION NO.

 6                                )(   2:18-CV-53-JRG

 7  VS.                          )(   MARSHALL, TEXAS

 8                                )(

 9  NETSCOUT SYSTEMS, INC.        )(   NOVEMBER 13, 2019

10                                )(   9:06 A.M.

11  _____

12

13              IN THE UNITED STATES DISTRICT COURT

14              FOR THE EASTERN DISTRICT OF TEXAS

15                      MARSHALL DIVISION

16  IMPLICIT, LLC                 )(

17                                )(   CIVIL ACTION NO.

18                                )(   2:18-CV-54-JRG

19  VS.                          )(   MARSHALL, TEXAS

20                                )(

21  SANDVINE CORPORATION          )(   NOVEMBER 13, 2019

22                                )(   9:06 A.M.

23                      PRE-TRIAL HEARING

24          BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

25            UNITED STATES CHIEF DISTRICT JUDGE
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10:27:25 1   And in the PTS products, the packet data structure

10:27:29 2 is what is depicted here in front of you, the structure

10:27:35 3 m_packet_info. And what you will see is that it has a set

10:27:39 4 of headers, m_ip_offset, m_4_offset, m_5_offset. We have

10:27:43 5 pointers to the entire packet, which itself demonstrates

10:27:46 6 that these functions are operating on a packet, a packet

10:27:49 7 that has all of the headers available to it. It has access

10:27:53 8 to the entire packet throughout processing.

10:27:55 9   And, again, the theory is simply from -- from

10:27:59 10 Implicit, that when I decide in my providence to look at

10:28:03 11 the L4 header, I, therefore, define this packet in terms of

10:28:11 12 a TCP processing routine, and I can ignore the first two

10:28:14 13 headers.

10:28:15 14   That ignores the packet, and I would just take the

10:28:19 15 Court back to its claim construction. We're looking at the

10:28:21 16 characteristic of the packet and asking what is the

10:28:26 17 outermost header. And throughout our products, all six of

10:28:29 18 them, including the ones that don't do the operation that

10:28:31 19 Mr. Hurt focused on, have ethernet as the outermost header

10:28:36 20 throughout processing.

10:28:37 21   Thank you, Your Honor.

10:28:37 22   THE COURT: All right. Counsel, I am persuaded

10:28:50 23 that there is a live factual dispute as to how these

10:28:56 24 products function, what's the role of the ethernet header,

10:29:01 25 if any, when the TCP header is being processed. I do not

10:29:08   1   find a lack of material question of fact that would permit

10:29:11   2   the Court to enter judgment on a summary basis, and,

10:29:16   3   therefore, I'm going to deny Defendants' motion for summary

10:29:18   4   judgment of non-infringement.

10:29:19   5   And as indicated, I think this controls the motion

10:29:25   6   to strike Dr. Almeroth's report, and it rises and falls

10:29:28   7   with the ruling on the summary judgment motion, so I'm

10:29:31   8   going to deny the motion -- Docket 143 to strike

10:29:37   9   Dr. Almeroth's report.

10:29:42 10   All right. We're going to take a short recess.

10:29:44 11   When we return, I'll take up Plaintiff's motion for partial

10:29:47 12   summary judgment and Daubert motion seeking to exclude

10:29:52 13   portions of the Defendants' invalidity expert report.

10:29:56 14   The Court stands in recess.

10:29:57 15   COURT SECURITY OFFICER: All rise.

10:32:43 16   (Recess.)

10:39:11 17   COURT SECURITY OFFICER: All rise.

10:39:12 18   THE COURT: Be seated, please.

10:48:42 19   All right. Counsel, as I indicated earlier, the

10:48:46 20   Court will now take up Plaintiff's motion for partial

10:48:49 21   summary judgment. This is Docket Nos. 144 and 145. Let me

10:48:58 22   hear argument, please.

10:48:58 23   MR. MARTIN: Your Honor, may I approach the bench?

10:49:00 24   THE COURT: You may.

10:49:02 25   MR. MARTIN: Brandon Martin for Plaintiff,